Quid Novi

McGill University, Faculty of Law
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CAREER DAY 2003

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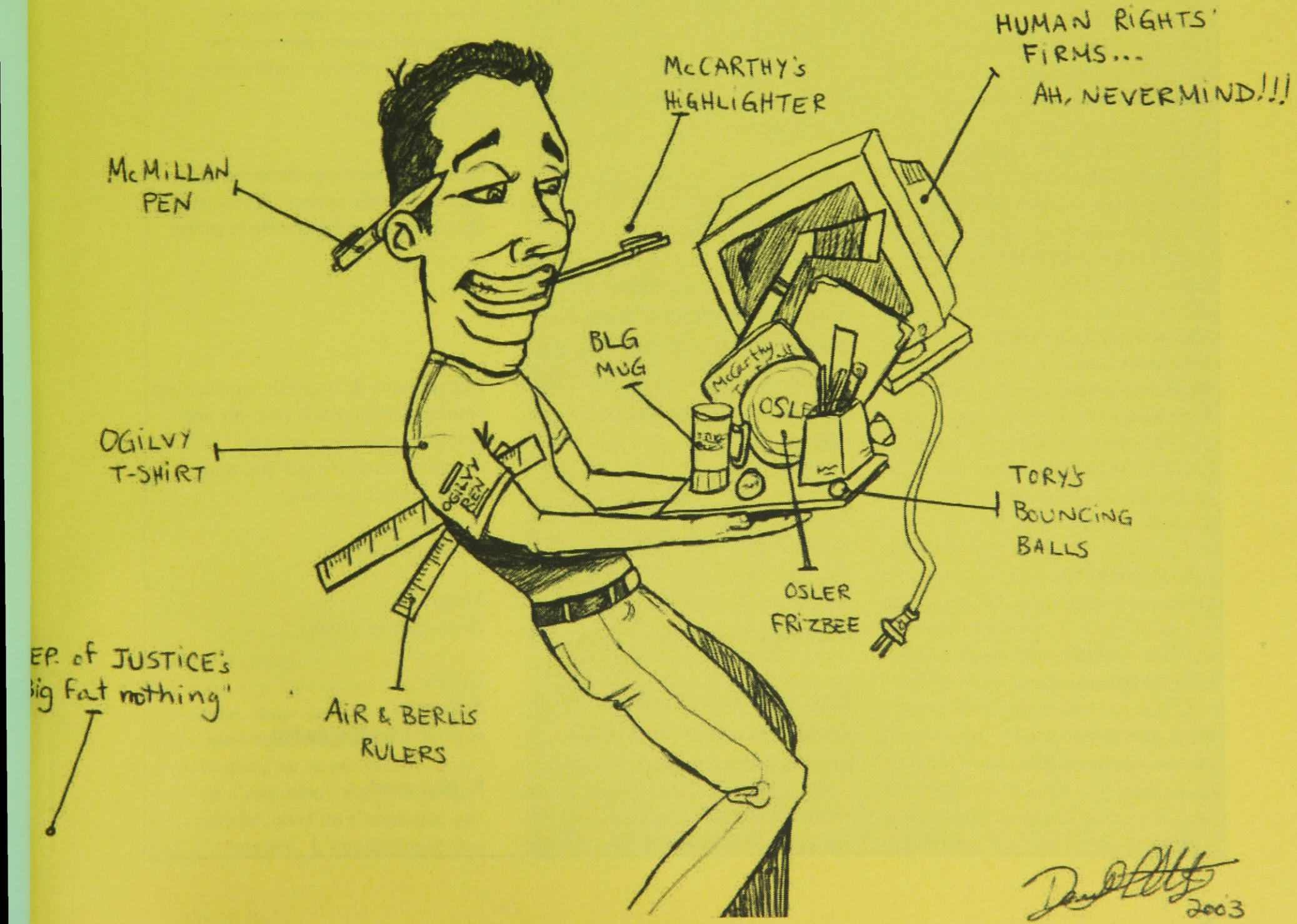

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Envoyez vos commentaires ou articles avant jeudi 5 PM à: quid.law@mcgill.ca.

Editor's Note

~~En ce début d'année,~~
~~En cette année nouvelle,~~
~~À l'aube de ce nouveau millénaire,~~

[soupirs]

~~Sous le ciel bleu de janvier,~~
~~Dans la froidure de cette année qui commence,~~
~~Alors que dehors, les gens se pètent la gueule sur les trottoirs,~~

[soupirs affligés]

~~Du plus profond de mon coeur,~~
~~Dans le bonheur et la joie,~~
~~En vertu des pouvoirs qui me sont conférés,~~

[soupirs affligés et prolongés]

~~Après une année bien remplie,~~
~~Après un trimestre bien rempli,~~
~~Après trois mois de souffrances,~~

[mugissements]

~~Que 2003 vous apporte la santé,~~
~~Que 2003 vous apporte la réussite,~~
~~Que 2003 vous apporte de la pizza,~~

...

...

Des souhaits de nouvelle année, c'est comme des flamands rose sur une pelouse québécoise un jour d'anniversaire: obligatoire, mais tragiquement quétaine.

Ah, les conventions.

Malgré tout,
Bonne année à tous.

Fabien
& Rosalie
& toute l'équipe, en fait

K-10 4-ever!

Les trésors de l'engagement…

par Élise Labrecque, Law I

Les fins de session sont rarement sans remous, trop souvent inoubliables de brouhaha et de stress. Ma première fin de session n'a échappé à ce constat qu'un instant, l'instant d'une conversation autour d'une bière bien méritée par un heureux et festif vingt décembre au Thomson House. Et si les convictions se révèlent certaines fois bien tard, elles n'arrivent jamais trop tard pour être écrites. Faut-il encore vouloir les écrire, ou y croire suffisamment pour le faire.

Quatre curieux discutent donc doucement de choses et d'autres, et parmi lesquelles l'avenir de leur Faculté. Le « leur » leur est heureux, car malgré leur venue relativement récente en cette institution, ils s'y sentent à leur place, pour certains contre toute attente. Leur volonté commune de débattre et de discuter est manifeste, et le lieu s'y prête à merveille. Leur Faculté est le théâtre de débats qui dépassent sans doute ses murs, qui n'intéressent peut-être pas tous ceux qui devraient s'y intéresser, mais qui ont le mérite de bousculer les idées reçues, les leurs, et les autres. Et les lutins débattent.

Malgré leurs divergences, un constat s'impose au gré des mots et des minutes… Ils croient tous quatre que l'engagement est la clé. La clé de beaucoup de choses, et d'autres souvent secondaires. Mais la clé du changement, surtout. Cet engagement commence par la prise de parole.

Alors abordons la délicate question du financement, que tous s'entendent pour habiller du préfixe « sous ». Le sous-financement, donc. Ma conviction est que la Faculté a besoin que l'on s'y intéresse et qu'on y investisse, dans un sens financier, certes, mais également autrement. Elle a besoin que l'on se positionne et non que l'on s'esquiche[1]. Elle mérite que l'on s'affiche, que l'on s'implique, que l'on s'y engage. L'engagement des étudiants débute par la volonté de participer, et non seulement de recevoir.

L'exemple du contrat social est particulièrement intéressant puisque chacun peut à peu près en faire ce qu'il veut : un contrat, inutile d'en répéter les conditions essentielles, qui n'en est peut-être pas un. Des gens qui s'y engagent sans vraiment devoir le faire. Et un résultat espéré, qui demeure hypothétique tant que les résultats ne sonneront pas à la porte. La seule part connue de ce contrat social n'est pas le contrat, mais le social, la volonté de mise en commun, l'effort du nous, petits bouts par petits bouts.

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Les étudiants ont une part importante à faire du côté social. Concrètement, leur principale ressource, bien qu'on en doute à la venue des examens, est le temps. Le temps de donner un peu de soi à sa Faculté. Le temps d'aider un collègue, des collègues, ou un professeur qui, lui, semble courir après quelques minutes pour enrichir ses enseignements, son site web, sa liste de lectures complémentaires. Le temps d'installer un micro lors d'une conférence, d'apporter une bouteille d'eau à un conférencier, et, qui sait, d'entamer une discussion passionnante avec celui-ci.

Il n'y a pas de solutions-miracle au sous-financement, seulement quelques idées. Le temps n'est pas une idée révolutionnaire. Elle n'est même pas originale. Les conséquences de ce don de temps sont prévisibles, même celles qui touchent à la philosophie de l'engagement. Mais elles dorment sur de poussiéreuses tablettes de l'esprit car elles ne sont justement pas des solutions-miracle. Elles ne sont pas l'antidote qui raiera le tant redouté « sous » qui ne veut pas s'extraire du financement. Le sous-financement ne peut pas être réglé ni en tout, ni en partie, par une solution-miracle, comme il a été mentionné par les représentants du corps professoral. J'ajouterai que les solutions qui sont en apparence minuscules peuvent parfois se révéler fondamentales.

Les conséquences de l'engagement étudiant, d'un « don de temps », « volontaire », « obligatoire » ou « crédité » pourraient dépasser un soulagement professoral. Par l'engagement étudiant, le social pourrait redonner du sens au contrat. Participer à la vie de la Faculté, c'est y faire sa place, c'est créer une ambiance, des amitiés, des affinités professionnelles et surtout intellectuelles. C'est y créer un lieu d'enseignement au sens complet du terme. L'enseignement, l'expérience, l'engagement. Les étudiants qui s'impliquent ne cessent jamais vraiment de le faire. Le fameux contrat social, celui qui constitue l'une des solutions au sous-financement, aurait alors d'autant plus de chances de porter fruit. Car l'implication étudiante est un cercle vertueux.

Mais elle n'est pas très à la mode… Qui dit implication, dit militantisme, ou bien pire. Militantisme est soit associé aux mots « partisan » ou pire « gogauche » ou « cococommuniste ». Ouh la la ! « Solidarité mes frères et mes sœurs, car l'union nous rendra forts[2]. ». Sans plonger dans mes souvenirs militants, l'implication est à chaque instant défiée en duel. Par l'individualisme surtout, redoutable adversaire s'il en est. Les perceptions jouent contre les gens impliqués. À toute petite échelle, le

temps consacré à sa Faculté par un étudiant ne peut être considéré comme de l'implication. On considère nécessairement le geste comme opportun, opportuniste et intéressé. Dans notre petit monde, l'étudiant qui donne du temps est intéressé ou simplement fou. A-t-on déjà vu le monde des intérêts concorder avec celui du don ?

Je crois que oui. Dans le social. Dans la philosophie de l'engagement en particulier. Dans les idées qui sous-tendent un contrat social où le social prend sa place. Mais déjà, il faut tendre l'oreille aux propos des curieux philosophes et des fous qui y croient encore…

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[1] « De l'ancien verbe *eschisser,* glisser, de l'italien *schizzare*, jaillir. Rester neutre dans une discussion, éviter de se prononcer, de prendre part à une querelle. » A. Duchesne et T. Leguay. *L'Obsolète, dictionnaire des mots perdus*. Collection Le Souffle des mots, Larousse, Paris, 1999. Page 225.

[2] Chanson militante ressortie des placards français pour un bref instant entre les deux tours de la présidentielle printanière 2002. ■

A Reply to the Members of the Working Group on Faculty Financing

by Jared Will, Law I

Though there are many elements of the article published by the Working Group on Faculty Financing in the last Quid that are troublesome, there are some welcome elements that deserve attention. First, one can only hope that this high degree of transparency and inclusiveness continues throughout the decision-making process. The fact that the committee took the time to address the entire student body and articulate its vision is important, and should not be ignored. The commitment to including the student body in the process is also laudable. Finally, the commitment to "accessible excellence," must remain the guiding vision of the Working Group.

However, the point must be made that to speak of accessible excellence is somewhat redundant. The idea that a funding plan needs to weigh accessibility and excellence as two distinct goals, which seems to be the dominant discourse in the Faculty lately, is misguided. As the Working Group recognizes in its claim that "excellence is premised in large measure upon making it possible for a diverse group of people to learn from each other," accessibility is a necessary condition of excellence in an educational institution. Excellence without accessibility is the promotion and endorsement of elitism, and there is nothing excellent about elitism.

It is for precisely this reason that the Faculty's admission process, as described by the Working Group, is to be lauded in so far as it promotes diversity in the Faculty. A case sensitive review process that is perceptive of applicants' backgrounds is an important element in the process of ensuring diversity. However, the claim that the student cohort presently exhibits "une diversité grandissante au niveau...du statut socio-économique" must be taken with a grain of salt. Though empirical evidence on this point is not readily available, it's a safe assumption that the student cohort at McGill Law does not reflect the socio-economic diversity of Montreal, Quebec, or Canada. The existence of a small number of students from less privileged backgrounds does not represent a diverse Faculty; it is more accurately described as tokenism. Clearly, the goal of welcoming a student cohort that represents the full socio-economic diversity of the community in an era of funding shortages is a daunting task-but it must nevertheless be the goal, and the efforts made thus far in this regard should be recognized and commended.

With respect to the issue of professorial salaries and workload, it is clear to everyone that the Faculty will need to substantially increase its professorial cohort in order to continue in a sane and sustainable manner. However, I cannot agree that a general increase in salary is a necessary component of the solution. As the Working Group points out, « les professeurs de la Faculté n'ont pas choisi une carrière dans l'enseignement pour "faire de l'argent"; la plupart d'entre [eux et elles ont] quitté des postes bien rémunérés pour venir enseigner à la Faculté, parce que [ces personnes croient] en ce qu['elles font] ». This is certainly true among the professors of this Faculty, given their excellent reputation in the field. Moreover, this Faculty currently employs an outstanding professorial cohort. I take all of this for granted.

What is unclear, therefore, is how it follows that the Faculty must increase salaries to attract new, excellent professors. As the committee points out, the fact that the current cohort has chosen to teach at McGill, in spite of the financial 'sacrifice', indicates that they are committed to and believe in what they are doing. Why is it that the same logic would not apply to incoming faculty? It seems clear that what underlies the excellence of the current cohort is (a) a dedication to legal instruction and (b) the excellence of the Faculty itself, and not concern for personal financial enhancement. Especially in light of a funding shortage, it seems that these same criteria that attracted the current cohort, rather than financial incentives, should be the foundation of the excellence of the incoming cohort. Moreover, pay equity among the cohort (a stated goal of the Working Group) does not per se require additional spending on salaries-though it may require a redistribution of that spending.

No one denies that McGill professors are overworked. There are two necessary elements in resolving this problem. The first is increasing the professorial cohort. The second is increasing support personnel for professors.

The second element would, in my mind, be best addressed by developing a more extensive student-assistantship program, in which undergraduate students would serve as professors' assistants throughout the year. If the assistants' workload included both research and administrative tasks, remuneration could be achieved by awarding course credits for these positions. Alternatively, the positions could be included as components of financial aid packages, as is the case in many US schools. Such an arrangement would not only be mutually beneficial for students and professors, but would also be more cost effective than hiring additional administrative staff.

> We at this Faculty should not be seeking solutions uniquely available to McGill Law.

The Working Group recognizes that funding shortages are universal in Canadian educational institutions, but suggests that McGill Law might be able to achieve a unique solution. This is not acceptable. The fact that we are in a somewhat privileged position and may be able to design solutions that circumvent shortages in public funds does not entitle us to do so. In fact, it would be extremely irresponsible for this Faculty in particular to address the funding problem in isolation. As I have made clear in a previous article, the only viable long-term solution for excellence in post-secondary education is public funding. Fracturing the post-secondary education community by seeking solutions that are not only unique to McGill Law, but also unavailable to other Faculties, departments and universities, is a direct attack on the struggle for the only viable, long-term means of sustaining excellence in post-secondary education-social funding.

The Working Group is to be engaged in canvassing and studying a wide variety of solutions to the current funding shortage. However, reading The Private Ad Hoc Committee on Processes for Professorial Recruitment's report and this recent article from the Working Group, as well as listening to the discourse from the Faculty members at the last general meeting, gives the distinct impression that we are resigning ourselves to the fact that public funding will not be forthcoming. If this is the case, I maintain that we are, as such, resigning ourselves to falling short of excellence in post-secondary education. If, as many believe, we are merely being realistic, we are then equating realism with a narrow vision of possibilities. Those who argue that public funding for education is no longer a reasonable expectation in industrial neo-capitalist society need only look a few thousand kilometers to the east, rather than a few hundred to the west. Those who argue that the current political climate in Québec-with the focus on high-school drop-out rates and health care-is a barrier to public funding for post-secondary education should keep two things in mind. First, foreclosing accessibility to excellent post-secondary educational institutions mitigates against motivating high school students to complete their diplomas. Second, part of the fury behind the demand for better health care is the recognition that the funding for public social services is in fact available. Those who argue that the structure of representative democracy in Québec is an insurmountable barrier to public funding for post-secondary education must surely recognize that to treat that barrier as insurmountable is to accept an illegitimate, and in fact undemocratic, political structure.

We should not be blind to the fact that this is an uphill battle. However, we at this Faculty should not be seeking solutions uniquely available to McGill Law, but rather joining the fight for unconditional and adequate public funding for post-secondary education. There are many dimensions of this battle in which the members of this Faculty are particularly capable of leading the charge, precisely because of "its reputation and leadership position and...its creative and engaged faculty, students and administrative staff." The responsibility of the members of this Faculty, professors and students alike, is not to seek navel-gazing solutions but to address the wider social context and engage in a process of re-invigorating public education. This responsibility follows not only from an elementary recognition of a social duty, but more concretely from the fact that most of us are direct beneficiaries of public education. To engage "its reputation and leadership position" to achieve a solution unique to our Faculty, which would in a significant way undermine the demands for adequate public funding for all post-secondary institutions, would be to endorse and exploit precisely the elitism that is antithetical to excellence in education. ■

Full-Time Daycare NOW Available!

by Kathleen Morrison, VP Operations SSMU

SSMU Daycare has full-time childcare spaces available for the children of undergraduate and graduate students of McGill starting the week of January 13th. These spaces are subsidized by the SSMU as a student service.
The SSMU Daycare is a brand new daycare facility located in the Brown Student Services Building and has places for 35 children aged 18 months - 5 years.
Registration is ongoing and the daycare has Open House every day from 10 -2 pm.
For more information, contact:
Cynthia Dezso, SSMU Daycare coordinator
(514) 398-8590
daycare@ssmu.mcgill.ca

Tales from the Barreau VI - The Final Chapter

by Al "Ex Presidente" aka "Dink" Mendelsohn, Alumnus 2

Ahoy hoy from the world of Big Law! Yes, I write to you from the 46th floor of a large office tower somewhere in the heart of a large urban center. I won't tell you where because it's irrelevant. But heed this warning - even a far left almost socialist who founded the Law Students for the Decriminalization of Marijuana can end up in a big office tower practicing commercial litigation.

With the Quid now online, I've been able to catch up on what's going on around the Faculty. Funding issues, security problems in the library, Chico Resch, people railing on the LSA, Marc Edmunds writing about U2 and how much he loves Law Games, a bunch of people attacking some poor student who only exercised his right to free expression by calling someone else's Quid article crap - it's just like 3 years ago! I really appreciate that everyone around there sees fit to keep things the way they have always been. Makes me feel like I never left.

Ah, but I did leave. And as the readers of last year's Quid know, I chronicled my life at the Barreau in a wonderful series of self-indulgent tripe (see Finn, I call my own stuff tripe - no need for you to do it, but I would be honoured if you did). But it occurred to me after reading all the online Quids that I never finished my story. Well I guess you know how it turns out - on the 46th floor practicing commercial litigation. Yes, I have been "inscrit sur le tableau de l'ordre du Barreau" as they say. On November 11 (I'll always, groan, "remember" that) I had a lovely ceremony at the Palais de justice where I raised my right hand and swore to uphold the something-or-other of my profession, yada-yada. I guess I really don't remember the details, only that I got really drunk after.

So it all turned out just fine in the end. Yes, I struggled. Yes, it was very hard work. But I ended up passing all six of my exams on the first try. The marks aren't glorious, mind you - 61, 63, 63, 65 among them. But that's irrelevant - Barreau exams don't measure intelligence. Me now law guy. I must say I don't feel any different. But apparently I am worth $150 an hour, about the same as a mid-range prostitute. Sounds about right.

p.s. If you want to talk Barreau or Big Law or anything else drop me a line at almendelsohn@hotmail.com. ■

Merry Civil II all, and to all a good night

by Harvey Auerback, Alumnus I

"Paranoid? You'd be paranoid, if everyone was plotting against you!" - Jim Hacker

WARNING: Current Barreau students reading this article should be advised that it may cause them to panic about their Preuve et Procédure mark.

Although I'm writing this article in mid-December, I realize nobody's going to read it till the Quid resumes publication in a month, so allow me to try and give you a bit of a time frame here.

On Tuesday, December 10, we of the Barreau wrote the dreaded Preuve et Procédure exam. The following day, we received our marks from the Civil II exam that we wrote in October.

All this happens in mid-December, when the whole world writes final exams. Considering the stressful combination of the dreaded Preuve et Procédure exam, widely reputed to be the "killer" even among Bar exams, and the Civil II chaser, you'd think that this would be a good time to give us a nice, relaxing 4 week break to recover. As it turns out, the Barreau in its infinite backwardness has decided to schedule four days of class next week.

I know what you're thinking. I'm just being paranoid. There's no way the Barreau could deliberately be this evil. This is probably the only way they could fit all the courses and exams into the academic year, and get everyone called to the Bar before the end of 2003. It's just that once you've actually been to Bar school, you realize that there are far too many of these coincidences. After a while, you really do start to feel like they're always out to get you, no matter what your mark was on the last exam.

For example, the Civil II marks were quite strong overall. An astonishing 79% of all students passed the exam on their first try. Even 2/3 of Ottawa and UQAM students managed to pass, which is better than any school did last year.

Sounds good, but those of you who know me should be expecting the catch. The Barreau giveth, and the Barreau taketh away. How does one "rectify" the situation of two exams with pass rates of 65% and 79%, and the very real possibility that 3 out of every 5 students are still undefeated? Simple. Give them a third exam.

I wouldn't be surprised to hear that this year's pass rate for Preuve is even lower than last year, when 399 students failed. I'll check back in early February to confirm, when the marks are released.

We all knew that 45% of the Preuve exam would consist of drafting an act of procedure, as it always has in the past. This is why we had 9 days of drafting classes over the past two months, to teach us how to draft everything from an opinion letter to a motion for leave to appeal. We must have drafted a dozen different acts of procedure in class, and we got feedback on every last one of them. If this were law school, we'd be feeling pretty good going into the exam, knowing that 45 points were securely in hand.

This year, the 45-point question required us to draft a Defence and Counterclaim. At least they told us that we were expected to draft a Defence and Counterclaim, unlike other years when the exercise was to simply "draft the appropriate act of procedure". The catch was that a Defence and Counterclaim was the one act of procedure that they never got around to teaching us how to draft. The day after my exam, an associate at my firm told me that, knowing the Barreau, I should have expected to be asked to do the one thing I wasn't taught. So if I'm paranoid, at least I'm not alone.

If this were the only reason to be worried about losing up to 45 points on the Preuve drafting exercise, it would be bad enough. But this wasn't our first exam with a drafting component. We had to draft a motion worth 40% of the Civil II exam. This was also a motion we had never been taught, based on a C.C.P. article that I had never even seen before, but at least it was a motion. Most motions are ultimately pretty much the same, and the only really different acts of procedure are the Declaration and the Defence, both of which have been abolished in the recent reform of the C.C.P., yet still manage to crop up on Bar exams.

Anyway, you already know that 79% of students passed Civil II, so we must have done reasonably well on that drafting exercise. We're obviously pretty good at drafting things we've never learned how to draft. Then again, the average mark on this exam was 67.5%, only 3 points higher than Civil I, and still dangerously close to failure. Maybe we lost a lot of points for sloppy drafting after all. The last thing in the world we need is another 5 points worth of drafting, based on a procedure even more foreign to us than a motion under seldom-used Article 909 of the C.C.P.

Of course, everybody who is currently writing Bar exams knows all this. We all know what we got on Civil II, we are all aware of how close we came to failing this one, and we're all worried about our Preuve marks. All of these things happen automatically every year. So how do I know the Barreau is out to get us this year, to make up for the glorious 79% pass rate on Civil II?

When they mailed us the corrected copy of our exams, enclosed was a small green piece of paper bearing the following ominous message:

AVIS: Aux étudiants et étudiantes[1]

Veuillez prendre note que la correction du volet Rédaction de l'examen Civil II a été effectuée en tenant compte que l'enseignement substantiel des règles de la procedure civile n'avait pas encore été dispensé aux étudiants. En conséquence, certains manquements aux techniques de rédaction n'ont pas été sanctionnés.

La Direction

Even if we were lucky enough to get most of the 40 drafting points this time, the next time promises to be much worse. One wonders how the Barreau could grade an exam more harshly than they already do, but it wouldn't surprise me if they found a way. It wouldn't take much either. The average mark on Civil II was just three drafting points and one unlucky 5-point question from failure.

It's actually quite surprising that they give drafting exercises on Bar exams, considering that the regular questions are clearly designed to have a unique and objective answer. The Barreau doesn't want to have to give marks for an answer they didn't expect, or justify to people why they didn't get marks they apparently deserved. They certainly don't want to deal with giving part marks for an essay-type question. They'll even cancel a question and give everybody the 5 points if there's the slightest ambiguity, though this is a very rare occurrence. The Barreau particularly does not want a court decision to the effect that the exam format is subjective, unfair, arbitrary, capricious or any other adjectives along those lines. It is for this last reason that they apparently capitulate in a hurry when you send them a letter on a lawyer's letterhead demanding that they give you the 5 points that you've clearly merited.

Grading a drafting exercise, on the other hand, is far from objective. This is probably why most of our drafting is in fulfilment of the professional skills requirement, which is evaluated on a pass/fail basis. It's also silly to have an evaluation format that docks points for the sort of minor informalities that a judge will either happily overlook or allow you to amend on the fly. Then again, when it comes to the Barreau, nothing short of a 79% pass rate surprises me anymore.

The Preuve et Procédure drafting problem is little more than an exercise in arbitrarily docking marks from poor, unsuspecting students. They usually don't even tell you what to draft, and deduct points if you guess wrong. One year, the instructions were to draft the appropriate act of procedure to institute proceedings for the resiliation of a lease. At the time, it was not settled law in Québec whether this had to be done by motion or by declaration, so there was absolutely no guidance at all in any documentation as to what procedure to draft. Needless to say, half the people got due credit for their drafting, and the other half had to get letters from their employer firms to the effect that the other format was equally acceptable in light of the uncertainty in the law. In addition, the uncertainty costs valuable exam time, and drafting already takes longer than answering short-answer questions worth a similar number of points.

A few years ago, the drafting exercise was a motion for preliminary exceptions under the simplified procedure, including two declinatory exceptions and several particulars. I won't even begin to mention the inherent inanity of filing a self-contradictory motion,[2] because that's how civil procedure works now. Article 481.7 C.C.P. says that preliminary exceptions are presented in the same motion, so this was essentially about half a dozen mini-motions in one. Just for added fun, Rule 11 of the Rules of Practice says that paragraphs of a motion for particulars must bear the same number as the paragraphs in the original proceeding to which they refer. So how exactly does one number the paragraphs in a combined motion for preliminary exceptions including particulars? I'll bet they never taught that in the drafting classes. They certainly didn't teach it this year. The corrected copy of the drafting exercise for that year had the paragraphs of the motion numbered with Roman numerals, and the particulars itemized in sub-paragraphs and numbered in Arabic numerals. I wonder how many poor students guessed right.

> Once you've actually been to Bar school, you realize that there are far too many of these coincidences. After a while, you really do start to feel like they're always out to get you, no matter what your mark was on the last exam.

Out of every drafting question, 15 points are specifically allocated for style, and the rest for substantive content. Style can be anything from properly including and numbering exhibits to not including an irrelevant allegation of fact. Some of these are even relatively specific, but there are 6 points allotted to the catchall category of "Qualité de l'expression écrite: utilisation du langage juridique approprié; la concision et la précision des allégations; l'absence de confusion ou de contradiction dans les allégations; des phrases complètes; un style non télégraphique." Within this category, each of the first six 'manquements' costs a precious point. I lost one point here on Civil II and I'll never know where, because my original document isn't marked up and these 'manquements' can occur anywhere at all within the text. Not only can I not correct this mistake on future exams,[3] but they also plan to be less generous in marking this category on the Preuve et Procédure exam. It must be painful to lose 4 points this way and get a 59. I wonder if they even keep records of where they docked points in these catchall categories, just in case somebody (or his lawyer) decides to ask.

For the record, four people got 100% on Civil I, which had no drafting component. Nobody scored higher than 95% on Civil II. I would be very surprised to learn that anybody got all 40 possible points for drafting.

When I wrote the Civil II exam, it seemed surprisingly easy to me. That's not to say that passing it was a sure thing for anybody, but it seemed more straightforward and less tricky than past Civil II exams. More of the subject matter pertained to ordinary rules of contract, rather than more obscure nuances of hypothecs and the reg-

ister of personal and movable real rights. Mercifully, I managed to pass, so I won't have to deal with the possibility of a make-up exam that might be harder than the original one.

When I wrote Preuve, I found myself reading, and citing in my answers, many articles of the Code that I had never read before. The answers were decidedly non-obvious, and didn't seem to reflect the content of the lectures even to the slight extent that usually comes from both of them covering Quebec law. I didn't spot as many blatant trick questions as I expected, but that could just mean that they tricked me. The token "ethics and professional practice" question related to a tariff of costs rather than actual ethical issues, so it read like a law question, but it apparently involved a nasty double-double-cross that I missed until it was brought to my attention after the exam. I'd say a typical law student could look forward to getting a couple of extra answers wrong, at 5 points apiece. I predict an average grade around 55-58%, with a pass rate below 60%.

Oh well, at least 79% of us can enjoy our holidays, secure in the knowledge that we've passed Civil II and clinging to the hope that we might have passed Preuve et Procédure. Of course, 'enjoy' is a relative term. I expect the people who get the most enjoyment out of their holidays will be the ones who absolutely love attending classes on the Charter and judicial review the week before Christmas, and those who love reading 600 pages of legal theory on Public and Administrative Law in French.

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[1] I know this is neither the time nor the place, but I'm really sick of the pervasive clumsiness in written French that comes from a combination of every word having a grammatical gender and an insistence on political correctness. If I had been a girl, I would have assumed that "étudiants" referred to me also, as it has for centuries. Note the use of "étudiants" referring to both genders collectively in the body of the notice. Nobody thinks that the girls were taught extra drafting techniques.

[2] Okay, I'll mention it down here. Why do you need particulars if you're asking the Court to dismiss the action? I guess it's not so bad if your declinatory exception is ratione personae, and the case will just get transferred to another district where the next judge will adjudicate as to the particulars, but moving for particulars seems like a submission to the jurisdiction of the court. Also, what if your declinatory exception is ratione materiae? Will the Federal Court rule on the remainder of the motion? Not likely.

[3] There are two reasons for this. One is that I don't know where my mistake was (or even if I actually made one), and the other is that I wrote my Preuve et Procédure exam the day before my corrected Civil II exam was mailed to me. ■

EXCLUSIVE

Law Games Participant Can't Believe He Didn't Get Play

Returning from Law Games Sunday, Law II student Jeff Cassels expressed dismay that for the second year in a row, he didn't get any action.

"I can't believe it" a sunken Cassels whined, "I got nothing, no making out on the dance floor, no co-ed showers, no sex in the hotel room while people were trying to sleep in the other bed, nothing."

The annual Law Games is well known as a weekend of heavy drinking and promiscuous sex. But as Cassels has learnt all to well over the last two years, although drinking may be a Law Games activity in which everyone partakes, getting ass isn't.

Reflecting on his plight, Cassels identified key errors that may have lead to his failure to get laid.

"I think part of my problem was that I hit on too many girls. Every night at the clubs I was trying to chat up four or five girls. In retrospect, focusing on just one or two per night would have probably produced better results. Focus is the key, focus makes the girl feel special; it makes her feel like you really want to be with her, even though you'd love to jump her friend as well."

"Another mistake that I made was that I wasted time on girls that were really hot. The hot ones know that they're hot and get hit on all the time. You are better off going for girls who don't normally get as much attention from guys."

"It didn't help that I got fall-over drunk every night. I remember being pretty trashed and hitting on this one girl. Things were actually going pretty well and then I said to her in this Barry White voice 'girl, you so fine, I just want to lay you down and make sweet love to you' ... I don't know what I was thinking".

In spite of two years of setbacks, Cassels remains undeterred.

As he looked out into the distance from the bus window, he said with a steely determination in his voice, "Next year I'm getting jiggy with it." ■

NEWS ITEM: QUID GETS CLASSIFIED SECTION

by Mike Brazao, Law II

MONTREAL – In other news, *The Quid Novi* has unveiled a brand-new Classified section. To respond to an ad, please consult *Quid* editors for contact information.

LOST AND FOUND

LOST. Common Law Property students. Last seen in early December, studying perpetuities. If found, please bring them to a civilian jurisdiction.

LOST. Suit and tie. Indispensable for conducting lectures. If found, please contact Richard Gold.

LOST. Need to study, or even give a damn. Previously belonging to second-year students with New York or Toronto summer jobs.

LOST. CEGEP student's virginity. Sometime after sponsored Coffee House. If found, do not return – possessor manifested clear intent to alienate.

FOUND. Non-white law student at McGill. Faculty is encouraged to contact *Quid Novi* to collect details for purposes of diversity statistics.

FOUND. Another decent law school in Canada. McGill administration and students cry foul, demand recount.

BIRTHS AND DEATHS

DIED. Aaron Chase. Suddenly, by choking on a free falafel. He leaves behind a hatred for his heritage and an inability to understand the need to share and celebrate common culture.

DIED. Public education. Gradually. Last rites pronounced in Moot Court open forum. Foul play suspected. Police currently have two suspects in custody: indifference and inaction.

DIED. Interest in human rights and social welfare among McGill Law students. Last seen in admissions applications, or possibly during orientation week. Investigators are currently questioning several Coffee House sponsors for leads. Members of the community are asked to be on the lookout for a crippling student debt, armed with a sense of sobering realism.

BUY AND SELL

WANTED. Whipping post, new, for Marta Juzwiak. Current one, Finn Makela, is showing signs of wear and tear.

WANTED: *Quid* article by Marc Edmunds that is less than 5 pages, and has something to say.

WANTED. A break. If you can spare one, please give to *Quid* editors.

WANTED. Interpreter for Daniel Moure's *Quid* articles, by McGill Law student body. Ability to micturate into the prevailing breeze a must.

WANTED. New professor to teach Civil Law Property, Intellectual Property, and Theories of Justice. Position vacated by David Lametti's career shift to nightclub DJ. Contact McGill Law administration with qualifications, and state whether salary expectations are measured in pesos or peanuts.

FOR SALE. Student's Soul. Pristine condition. Interested firms should contact any graduating law student without an articling position. Asking price: 6-digit salary and free lunches.

FOR SALE. McGill University. Highest bid accepted. ■

Professorial Recruitment

By Regan Morris - Faculty Councillor & Rachel Faye Smith - VP Academic

As any concerned McGill Law student knows, there was a lot of grave talk last semester about the state of this Faculty. This semester students will have the opportunity to participate in a process that directly affects its future, namely, selecting new professors.

Starting January 17th, six potential professors will be coming to visit the Faculty. This is part of McGill's ongoing recruitment process aimed at hiring new professors for next year and beyond. Each candidate will spend a day at the Faculty, meeting professors and students, touring the campus and most importantly, giving a short presentation of their work. All students are invited to attend these talks and make comments on the candidates.

It's important that students participate and come to these talks for a couple of reasons. First, potential candidates need to be evaluated from a student perspective. Are they good teachers or are they likely to sedate most students? Second, if we are truly "all in this together", that is, if we are part of a community during our time here and not just mere clients of a degree-granting business, then we have a duty to ensure that the best new professors are hired.

Now for the details. All of the talks are scheduled for 11:30am to 12:30pm on the days of the visits (except for those on Monday, which will begin at 12:30pm). Below is a list of the candidates. They are an interesting group: all are bilingual, all are currently completing doctorates in law, two are Europeans, one is a francophone, one is female, and one is a graduate of our Faculty.

- January 17th - Evan Fox Decent
- January 22nd - Frederic Bachand
- January 24th - Heather McLeod-Kilmurray
- January 27th - Markus Puder
- January 29th - Mark Antaki
- February 3rd - Bogdan Iancu

We'd like to invite you to put aside a little time to come and hear the candidates talk. Feel free to come with questions - and we'd love to hear your comments so that we can take them back to the Hiring Committee afterwards. Candidates will also be having a 30 minute group meeting with students at 3:30pm on the days of the visits. (If you are interested in attending any of these smaller sessions please contact either Rachel or Regan).
Don't worry; we will also be reminding you of all of this beforehand. Stay tuned to noticeboard. Thanks, and hope to see you there. ■

The Seventh Clone is Free

by Edmund Coates (coatesill@hotmail.com), Alumnus I

Human cloning opens up a host of new issues for law students, for example:

1.) Constitutional Law: Do the Prime Minister's clones have to wait until they, themselves, reach age 30, to be appointed to the Senate, or can they be appointed at birth?

2.) Criminal Law: the right to a jury of your clones

3.) Copyright Law: Would the cloning of Paul Hesse create such an explosion that it would destroy all other clones?

4.) Employment Law: If you make less than twice the minimum wage, can your employer pay you less than your clone?

5.) Transport Law: Would you need two bus tickets if you were a three-legged clone?

6.) Property Law: If you could create a clone of yourself that remembered the rule in Shelly's case, who would own all the space freed-up in Pubdocs?

7.) Restitution: If a clone, of your clone, reimburses your clone for the cloning expenses, can you claim a share?

8.) Common Law: A clone is somewhat like a twin, a twin is somewhat like a pair, a pear is somewhat like an apple, therefore a duck is not an animal.

9.) Tax law: If you live with your self in a mobile home, it will qualify as your principal residence, but what if you live with your clone in a shoe?

10.) Judicial Law: If future Supreme Court justices could send a clone home from their busy careers, to spend time with their kids, would unconscious guilt still surface later, and continue to drive them to dress and act like Santa Claus? ■

HUMAN RIGHTS WORKSHOP

Professor Hugo Cyr
University of Quebec at Montreal (UQAM)
TOPIC: The Quebec Civil Union: Equality Rights and Gay Marriage
January 22nd, 12:30 - 2:30, Room 201

Prof. Cyr will discuss human rights motivations for Quebec's new Civil Union Act, as well as the techniques by which human rights advocates promote change.

For the skills-building exercise, we will divide the participants into 5 groups: heterosexual citizens, religious organizations, judges, organizations representing lesbian, gay, bisexual and transgendered people, and Parliamentarians. Spokespersons from each group will discuss the issue from their role-playing perspectives.

To participate, please e-mail Audrey.DeMarsico@mail.mcgill.ca by January 18th.

Blockbuster Trade Shakes up SCC:

MCLACHLIN, IACOBUCCI EXCHANGED FOR CALIFORNIA JURIST, BAG OF PUCKS

by Jeff Roberts, Law II

The Canadian legal world was set abuzz yesterday by the an nouncement that Supreme Court captain Bev McLachlin and assistant Frank Iacobucci had been traded to California.

The move came about as Ottawa sought to shake up the slumping justices. The Court's special teams have long been suffering, notably their obligations decisions.

General Manager, Adrienne Clarkson, seemed pleased by the trade which will bring California jurist, Armand Arabian, to the Court. Arabian has long been noted for his speed and efficiency, qualities which Clarkson declared, "will bring some much-needed style and concision" to the team.

Responses from the out-going justices were mixed. At a press conference, Iacobucci presented journalists with a 100-page explanation as to why the trade would be good for both sides. In it, he concluded that a two-part test could be used to evaluate the strengths and weaknesses of the move.

McLachlin, for her part, handed the press a 200-page document. The document explained that understanding the trade actually required a three-part test, involving strengths and weaknesses plus the Oakes test.

Some observers were remarkably tight-lipped about the move. At the McGill Faculty of Law, professors refused to comment; however, several were overheard muttering "thank-god".

Law students across the country were generally pleased, many of them relishing the prospect of shorter decisions. In the words of one student, "Cool. This should save me about $50 a term in printing costs."

A bag of pucks was also included in the deal. ■

The Raoul Wallenberg Forum on Human Rights
Conférence Raoul Wallenberg sur les droits de la personne

"HUMAN RIGHTS LAW, HUMANITARIAN LAW AND REFUGEE LAW: THE PREOCCUPATION OF THREE MAFIAS"

Guest lecturer / conférencier invité:

Göran Melander

Professor of International Law,
Founder and Director of the Raoul
Wallenberg Institute
of Human Rights and Humanitarian Law,
Lund University, Sweden

Professeur en droit international,
Fondateur et Directeur de
l'Institut Raoul Wallenberg
des droits de la personne et de droit humanitaire
Université de Lund, Suède

Canada-Sweden Human Rights Award
presented to Ambassador Philippe Kirsch with remarks to follow.

Prix Canada-Suède des droits de la personne
décerné à l'Ambassadeur Philippe Kirsch,
suivi de quelques remarques par le récipiendaire.

Co-sponsored by:
Faculty of Law, McGill University
InterAmicus
The Embassy of Sweden

Thursday, 16 January 2003
5:30 p.m.
Faculty of Law, McGill University
Moot Court

Coparrainnée par:
La faculté de droit de l'Université McGill
InterAmicus
L'Ambassade de Suède

Le jeudi 16 janvier 2003
à 17 h 30
Faculté de droit, Université McGill
Salle du tribuunal

Raoul Wallenberg Forum on Human Rights

This forum will take place on the eve of January 17th, which has been proclaimed as Raoul Wallenberg Day in Canada.

In 1944, as hundreds of thousands of Jews were being deported from Hungary to become further victims of the Holocaust, one Swedish diplomat took it upon himself to rescue as many of them as he could. Raoul Wallenberg made available thousands of protective passports, built a city-wide relief organization in Budapest, created a compound of thirty-two apartment houses which shielded some 13,000 under the Swedish flag, and personally intervened at the railway station whenever he caught wind of deportation convoys. Raoul Wallenberg's courage, reverence for life and commitment to human rights were responsible for saving 100,000 lives.

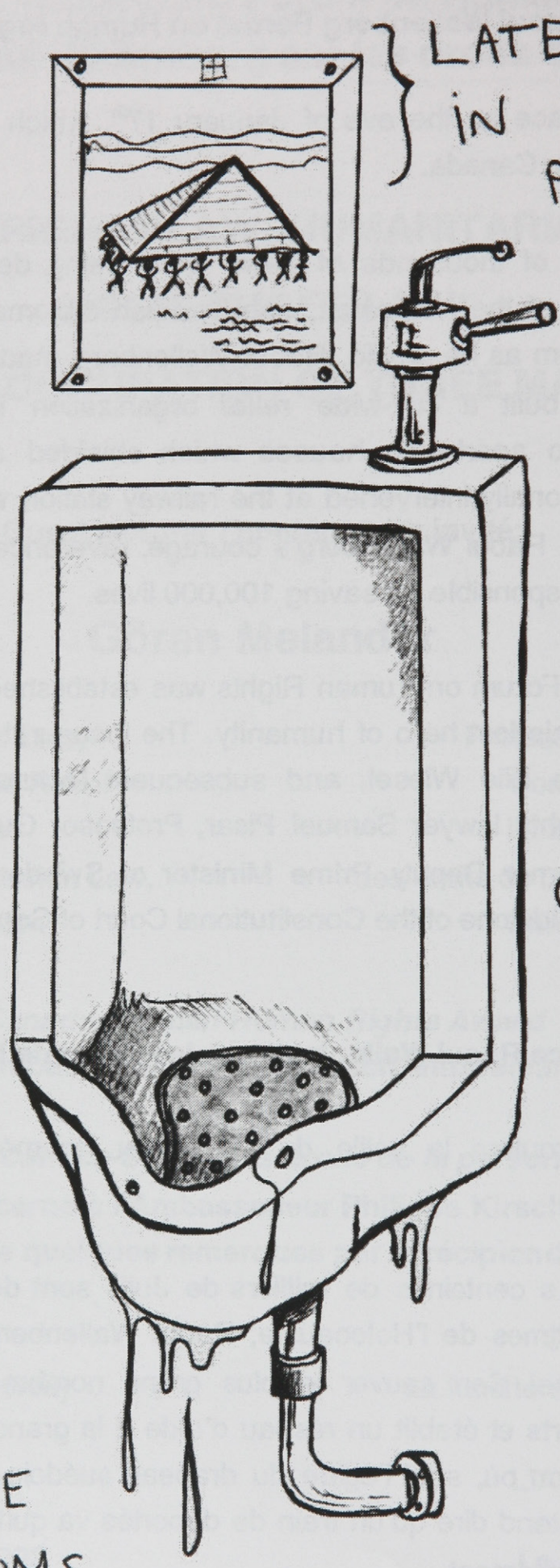
The Raoul Wallenberg Forum on Human Rights was established in 1988, in the name of – and in honour of – this lost hero of humanity. The inaugural lecture was delivered by Nobel Peace Laureate Elie Wiesel, and subsequent lecturers include distinguished international human rights lawyer Samuel Pisar, Professor Guy von Da rdel, brother of Raoul Wallenberg, Former Deputy Prime Minister of Sweden, Per Ahlmark, and the Honourable Richard Goldstone of the Constitutional Court of South Africa.

Conférence Raoul Wallenberg sur les droits de la personne

La conférence se déroulera la veille du 17 janvier, journée Raoul Wallenberg au Canada.

En 1944, alors que de s centaines de milliers de Juifs sont déportés de Hong rie pour devenir les futures victimes de l'Holocauste, Raoul Wallenberg, diplomate suédois, se fait un de voir personnel d'en sauver le plus grand nombre possible. Il met à leur disposition de passeports et établit un réseau d'aide à la grandeur de Budapest. Il crée un complexe d'habitation où, soul l'égide du drapeau suédois, il ab rite quelque 13,000 personnes. Lorsqu'il entend dire qu'un train de déportés va quitter la gare, il se précipite pour intervenir personnellement.

Grâce à son courage, à son respect pour l'humanité et à sa foi inébranlable dans les droits de la personne, Raoul Wallenberg a sauvé plus de cent mille vies.



IN THE SEPTEMBER 11TH 2001 QUID NOVI (vol. 22, no. 2), THE COVER CARTOON SARCASTICALLY SUGGESTED THAT FIRMS SHOULD ADVERTISE IN N.C.D.H. PUBLIC TOILETS. IRONIC, AIN'T IT! IT SEEMS ONE OF THEM TOOK IT SERIOUSLY... THE BEER AND CONDOMS COMMERCIALS HAVE SOME NEW COMPETITION...

(SHOULD I EXPECT ROYALTIES FOR THE IDEA?)

2003

ETHICS AND LAW PANEL:

Daily Confrontations with Ethical Problems in the Practice of Law

Wednesday, January 22, 2003

1:00pm - 3:30pm

Moot Court

PANELISTS:

Richard E. Shadley, Q.C., Criminal Defence Lawyer (Shadley Battista)

Honourable Mr. Justice Allan R. Hilton (Superior Court of Quebec)

Honourable Mr. Justice William Vancise (Saskatchewan Court of Appeal)

Me Lori Weitzman, Crown Prosecutor

Me Lynne Kassie, Family Lawyer

Me William Hesler, Corporate Commercial Lawyer (Olgilvy Renaud)

Introduction to the Ethics & Law Panel

by Chantal Beaubien, Law III

The practice of law, in all areas, raises many ethical dilemmas. Apart from acts and omissions that might give rise to criminal, civil or disciplinary liability, there are severe ethical dilemmas that force lawyers to consider the proper course of action for their clients and themselves. What do you do when you discover that your client has lied to you? Can you enter a guilty plea on behalf of a client whom you know to be innocent? What must you do to ascertain the source of your client's money?

The Ethics and Law Panel on January 22nd will address a variety of ethical problems that lawyers are often faced with. Examples of such problems are printed here for you to think about and discuss. Variations on these problems and additional ethical problems will also be addressed in the discussion. The purpose of the discussion is not only to hear the views of the panelists but to hear the views and questions of our fellow students. Since there are seldom clear answers to these problems, the discussion and opinions of the panelists and students can add greatly to our understanding of what we think are our ethical obligations as lawyers. ■

Ethics and Law Panel:

Example Problems

1. Scenarios from Civil Law

SCENARIO 1

You and your partners have had a long-standing relationship with Acme Manufacturing, which is a publicly traded company. As outside counsel, your instructions are, as a matter of company policy, supposed to come from in-house counsel. However, for the last four or five years you have developed a close working relationship with the President and CEO, Mr. Mobile. When you are asked to give a presentation to the Board, it is usually at the invitation of Mr. Mobile. In practice, Mr. Mobile is the one you report to, although you keep in-house counsel informed.

One of you partners frequently does work for a competitor of Acme, a company known as Beta Manufacturing. You had drinks and dinner at your partner's house on Saturday night. Your partner has learned that Mr. Mobile has worked out a deal with Beta. Your partner tells you "off the record" that Mr. Mobile has not told anyone about his plans to jump ship, but that he plans to leave Acme high and dry at the end of the coming week.

The timing could not be worse for Acme, since the company is involved in some very important discussions for a strategic alliance with its key supplier, Raw Material Corp. Mr. Mobile has been conducting the negotiation with Raw Material Corp. practically on his own, with your input on the legal issues and the drafting of the contract. On Monday, you were scheduled to send the final draft of the agreement to Raw Material's lawyer for signature. You quickly realize that when Mr. Mobile moves to Beta, the deal worked out with Raw Material Corp. will likely follow him.

On Monday morning, Mr. Mobile calls to instruct you to put everything on hold regarding the signature of the contract with Raw Material Corp.

You find yourself in a real moral bind. You know that if you hold back on the Raw Material contract, Acme will likely lose the deal to Beta.

Can you betray your partner's confidence and confront Mr. Mobile with what your partner told you "off the record"?

If you let on that you know what he is up to, Mr. Mobile will probably tell you that what you have been told is privileged and confidential, and that your firm is bound not to make any disclosure to Acme. If you are told to remain silent, is that the end of it?

In any event, what are you going to do about the draft agreement with Beta? You have firm instructions from Mr. Mobile not to send the draft to Raw Material Corp.'s lawyer. If you don't, the deal may fall through the cracks in a day or two. If you do, you will be disobeying clear instructions from Mr. Mobile.

What do you do?

SCENARIO 2

You are the partner responsible for Zeta Bank Corp. The Firm is handling many files for this long-standing client. One of them is a piece of litigation relating to a letter of credit dispute. About a year ago, you referred the file to a bright young associate, Arnold Terminator. Arnold has a lot of promise as a litigator and future partner.

When you assigned him to the file, you told him to do everything possible to please this important client. The bank's senior vice-president for legal affairs has asked to see you about the file. She wants to see you alone.

The bank's VP relates the following. Since the institution of the action against the bank, Arnold has made four interlocutory motions, all of which have been unsuccessful, except for a motion for particulars, which was successful in part. Arnold appealed the clerk's decision on the motion for particulars and lost. He made a motion to have the action dismissed, which he lost, and then tried to get leave to appeal to the Court of Appeal. He subpoenaed the Plaintiff's President for examination on discovery and refused to postpone the examination when the Plaintiff's attorney said she had planned to be in Florida with her family that week. During the examination, he badgered the witness. Also, when opposing counsel intervened, Arnold told her she didn't know the rules of procedure and referred to her as "Miss" and "My Dear". The bank's VP attended the hearing of one of the interlocutory motions and was distressed that the judge seemed to be paying a lot more attention to the other lawyer than to Arnold. The hearing has been postponed from an earlier date on which Arnold had insisted in proceeding, notwithstanding the fact that the other lawyer was in another courtroom and had sent a stagiaire to hold the fort in the meantime. The action is for $80,000, and to date Arnold has racked up time of $18,000 before even filing a defence. Of this amount, $8,000 is for research time relating to the interlocutory appeal attempts.

The bank's VP states further that, at the beginning of the file, she asked Arnold if the case could be settled, to which he replied that there was no point in exploring settlement until the Plaintiff and their lawyer had been run through the mill so that they could have a taste of what would happen if the case went to trial. Subsequently, someone at the bank has heard that the Plaintiff's President was so infuriated by the way he was treated during his examination on discovery that he has told members of his trade association not to deal with the bank.

What are you going to tell the bank's VP? What are you going to say to Arnold?

SCENARIO 3

You have received a letter from the Secretary-Treasurer of Fiduciary Trust Company, asking you to provide a response to their auditor's request on claims and possible claims. The enquiry letter lists all of the claims against Fiduciary of which you and members of your firm are aware. However, it does not mention a possible claim. You learned about the possible claim a week ago, and were asked to keep the matter strictly confidential. It appears that one of the senior trust officers at Fiduciary has absconded with over a hundred million dollars worth of negotiable securities belonging to an estate administered by the company. To make matters worse, the insurance coverage for employee fraud has been allowed to lapse. If the employee is not caught and the securities recovered, the estate will eventually learn of the defalcation and sue. A suit of that magnitude would severely damage the company's image and drive down the value of its shares. Other clients might withdraw their business and the company could even be threatened with insolvency. Private investigators have been retained to track down the villain, and there is a chance he might be caught before it is too late to recover the securities. If they are successful, no one may ever learn about what happened and it will be business as usual.

In the response to the audit inquiry, a copy of which is sent to the auditors, can you remain silent about the possible claim? Should you refuse the client's request to provide a response letter? What advice should you give the client regarding disclosure of the incident to the shareholders at the upcoming annual meeting?

SCENARIO 4

Tina and Tony were married in 1992 and signed a marriage contract adopting the regime of separation as to property. At the time of the marriage, Tony was a wealthy individual having a net worth of approximately $5 million with a thriving business. Tina did not have any material assets and had always worked to support herself and her son from a former marriage, never having earned more than $20,000 a year.

At the beginning of the marriage, the lifestyle of the parties was sumptuous and no expense was spared for clothing, meals, jewelry and travel. Unfortunately, Tony's business as well as the marriage unraveled. Tony sued

The Quid wishes you a happy new year!

Deadline for next issue is Thursday January 16th at 5PM:
quid.law@mcgill.ca

for divorce in 1998 and Tina countered requesting a lump sum of $2 million and alleging not only that she had lived a wonderful lifestyle but, notwithstanding Tony's recent plea that business was terrible, Tony had substantial hidden assets off shore.

Tony was deposed by Tina's lawyer and was asked and was asked whether he had any assets of any nature whatsoever and particularly any bank account off shore. Tony vigorously denied same and stated unequivocally that he had no money whatsoever off shore. After the deposition, Tony decided to engage a new lawyer and comes to you.

Preparations for the trial on the merits are commenced. You went over Tony's testimony many times and Tony repeatedly denied the existence of any off shore assets. One week before the trial, Tony admits to you for the first time that he did indeed have monies in an off shore account but that it would be impossible to prove and it was only $400,000 and not the millions alleged by Tina. The transcript of Tony's examination denying the existence of any off shore money under oath has been filed into the Court record. Tony will be first witness in the case.

What do you do?

SCENARIO 5

Jimmy and Gina were married in 1985 in the regime of partnership of acquests. Divorce proceedings are taken in 1999 and both parties wish to settle all matters between them amicably. Each party produces a truthful statement of their respective assets and liabilities. Settlement discussions ensue and an agreement in principle is reached. Prior to the drafting of the agreement, Gina received an offer for her company, which would triple the value of her shares.

She has reached an agreement in principle and Jimmy had had nothing to do with the success of her business. She retains counsel and asks whether she is obliged to disclose the increase in her assets.

What is your advice?

2. Scenarios from Criminal Law

SCENARIO 1 – Handling Physical Evidence

The Smoking Gun:

A client enters your office, informs you that she has just killed someone in the course of a robbery, and places the "smoking gun" on your desk. She also informs you of the whereabouts of the jewels which she took from the deceased's home. She offers to bring the jewels to your office for safekeeping. She explains that the deceased is actually her sister, and that she robbed her in order to reclaim their late mother's jewels which in her opinion, her sister had wrongfully withheld from her since their mother's death. She also tells you of a letter she had written to her sister a few weeks earlier in which she demands the return of the jewels "or else". She tells you that upon receipt of such letter, her sister had stormed into her office, ripped it into tiny pieces, and told her stay out of her life forever. She, however, had kept a copy for herself. She asks you what she should do with it.

What responsibilities have your client's disclosures triggered for you? More particularly, do you have any affirmative duties with respect to the gun, the jewels, and the letter – the instrumentalities, the fruits and the evidence of motive for the crime?

R. v. Murray:

In the Ontario case of *R. v. Murray*, the accused was a defence counsel who acted for Paul Bernardo in connection with two murder charges and a number of related offences. Bernardo had videotaped the gross sexual abuse of four of his victims, including the two murder victims, and later hid the videotapes in the ceiling of his house. Despite a 71-day search of the premises, these tapes were not located by police. Bernardo, who was in custody at the time, directed his counsel to attend at the house once the police had finished the search, and to remove the videotapes. Counsel did so, after which he retained the tapes for 17 months without disclosing their existence to the Crown, ostensibly for the purpose of springing the tapes on Karla Homolka, the key Crown witness during cross-examination at trial. Charges were ultimately brought against counsel, alleging that the concealment of the tapes constituted an attempt to obstruct justice. Although he was acquitted, counsel's conduct was subject to sharp criticism by the Court.

What should Murray have done?

Double Books:

Your client calls you concerned that he is about to be audited by the tax department. His ex-partner recently received a visit from the authorities. He tells you that he has two sets of books and would like to bring you the books for safekeeping. In the alternative, he intends to hide the books at a friend's house.

How do you respond?

SCENARIO 2 – Crown Disclosure

You are the Crown prosecutor

in charge of a sexual assault file. After full disclosure and many hours of discussions between Crown and defence, the accused through his counsel indicated that he wished to plead guilty and present a joint submission on sentencing.

The assault took place some 20 years ago when the victim was 12-14 years old. The accused is now in therapy and is very remorseful. He has provided you with his therapist's report which indicates that he has come to terms with his problem and wants to deal with it.

The week before the scheduled date for his guilty plea, the victim is in an accident which caused her severe long-term memory loss. It is clear to you that she would be unable to testify.

Must you inform defence counsel?

SCENARIO 3

Bill Jones is 21 years old and a medical student at McGill. His brother Bob is 22 years old and works in a garage. They are about the same size and look very much alike. On June 5th they were both at Sir Winston's Pub with some friends drinking beer. George Green, who was very drunk, was yelling insults at the two brothers and their friends. At a given moment Bill had had enough and threw a bottle in George's direction. Unfortunately, the bottle hit George on the head, he fell over and hit his head on the corner of the table. Eight hours later, he died in hospital.

Of the several witnesses who saw the incident, only one identifies Bill as the person who threw the bottle. The others cannot be sure whether it was Bill or Bob. Bill is charged with manslaughter.

Bob comes to you and asks you to represent him. He wants to admit that he threw the bottle and wants to plead guilty to manslaughter. What should you do?

SCENARIO 4

Mr. Herbert was jointly charged with his wife on counts of conspiracy to supply heroin and possession of a controlled drug. On the second day of the trial, Mrs. Herbert's lawyer was told that if Mr. Herbert pleaded guilty, the Crown would not continue proceedings against Mrs. Herbert. Mr. Herbert decided to change his plea to guilty, although he maintained that he is not guilty. What should you do?

SCENARIO 5

Three judges from Eastern Canada are attending a conference in Victoria, B.C. One night, they end up at the Blue Whale Café, where Judges Plante and LeNoir drink a great deal of martinis. Judge Tranquille, a member of AA, drinks Perrier.

Sometime after leaving the café, in the early hours of the morning following complaints from numerous homeowners, officer Righteous arrests the three of them for disturbing the peace. Upon their return home, Plante and Lenoir consult you and, because in fact they were making a great deal of noise, agree to plead guilty. It is understood that the Crown attorney will suggest an absolute discharge for each of them.

Tranquille tells you he made no noise at all and was actually trying to quiet the other two. After speaking to officer Righteous, the Crown attorney refuses to withdraw the charge unless Judge Tanquille pleads guilty to a municipal by-law.

Judge Tranquille reaffirms his innocence. However, he cannot afford the time or money to go to Victoria for a trial. He wants to plead guilty to the municipal by-law offence. What do you do?

SCENARIO 6

Smith, who is charged with murder, appears before Mr. Justice Jones. When the charge is read, Smith offers a plea of guilty to manslaughter. This plea is accepted by the Crown attorney. Jones J. asks Smith why he shot and killed the victim. Smith replies: "I had no choice, he had a gun and was about to shoot me. It was him or me." Jones J. then states, "You have a defence, I don't think you should plead guilty." Smith replies, "Judge, I have a lengthy record, a jury won't believe me, and I know innocent people are sometimes convicted. I have heard of Marshall, Morin and Milgaard. I don't want to take a chance. I want to plead guilty to manslaughter." Jones J. refuses the plea and ten days later, as Smith foresaw, the jury doesn't believe his version and convicts him of murder. When asked if he has anything to say with respect to his sentence, he states, "I still had no choice, it was him or me. Now can I plead guilty to manslaughter?"

Was Justice done?

SCENARIO 7

Smith, a medical student at Université de Montréal, is charged with possession of Hashish. He and three other students were living in a small three-bedroom apartment near the university. The police, holding a search warrant, enter the apartment and find Smith studying in the living room. In a cupboard in the same room, a pound of hashish is found in a box. There are no fingerprints or identifying marks on the box. All four students have signed the lease. The Crown disclosure indicates no other evidence and the Crown attorney states that the only witnesses are the arresting officers. Smith admits to you that the drugs belong to him.

How do you defend him?

SCENARIO 8

Jones is charged with robbery. The only issue is whether Jones is the individual who drove the getaway car. He tells you four of his friends will testify that, at the time of the robbery, they were with him playing cards, miles from where the robbery took place. You interview his witnesses and his alibi appears solid. The only Crown witness is Mr. Robinson, a senior citizen whose line of vision was somewhat obscured by trees and who is very nervous. Mr. Robinson is adamant as to the identification of Jones.

The day before the trial starts, Jones tells you that he cannot sleep at night and that he believes that he must tell you the truth: He committed the robbery.

What do you do? Can you call the alibi witnesses? Can you allow Jones to testify? How would you approach the cross-examination of Mr. Robinson? ■

Common Law Careers Day

January 13, 2003

New this year! The CPO is organizing two forty-minute panel discussions that will take place in Room 202 in New Chancellor Day Hall. Students are invited to participate in these discussions and to attend the information session that will be held afterwards. At midday, a "networking" luncheon, opened to employers and students alike, will provide an opportunity for an informal meeting.The "booths" will then be held from 1:15 p.m. to 3:45 p.m. in the Atrium, as in the past. The day will unfold as follows:

10:00 – 10:40 Panel Discussion # 1 –Women and the Law

(Room 202)
Alex Johnston, Goodmans
Line Forestier , MAG
Marie-Andrée Vermette, WeirFoulds
Shuli Rodal, Osler , Hoskin & Harcourt
Sharon Grif fin, Marusyk, Miller & Swain/MBM & Co.

10:45 – 11:25 Panel Discussion # 2 – Small Firms vs. Large Firms

(Room 202)
Shonagh McVean, Gilbert's
Charles Hofley, Hicks, Morley, Hamilton, Stewart, Storie
Chantelle Courtney, Stikeman Elliott
Michelle Gage, Heenan Blaikie
Colin Baxter, McCarthy Tétrault

11:30 – 12:10 Information Session – Everything You Need to Know About Recruitment in Toronto

(Room 202)
*A must if you plan to do the OCIs next year!
Rosalind Cooper, Fasken Martineau
Cathy Tempesta, MAG

12:15 – 13:15 Networking Luncheon

*You must register at the CPO in order to get a nametag (Common Room)

13:15 - 15:45 Information Booths (Atrium)